

ASSEMBLY BILL

No. 794

Introduced by Assembly Member Corbett

February 24, 1999

An act to amend Section 56.10 of the Civil Code, to amend Sections 1985.3, 1985.6, and 2020 of the Code of Civil Procedure, to amend Sections 1560, 1561, and 1563 of the Evidence Code, and to amend Section 4055.2 of the Labor Code, relating to confidentiality.

LEGISLATIVE COUNSEL'S DIGEST

AB 794, as introduced, Corbett. Subpoenas: personal records.

(1) Existing law generally provides for the confidentiality of medical records with specified exceptions. A provider of health care is required to disclose that information, under various circumstances, including pursuant to a subpoena or a subpoena duces tecum.

This bill would, among other things, specify that the above-referenced requirement applies to a subpoena issued by a person who is not a party to an action to obtain discovery, or a subpoena duces tecum issued under regulations promulgated by the Division of Workers' Compensation of the Department of Industrial Relations. The bill would also provide that any physician who willfully withholds patient records, or a summary of patient records because of an unpaid bill for health care may be subject to specified sanctions, which include punishment as an infraction. By creating a new crime, the bill would impose a state-mandated local program.

(2) Existing law provides for a subpoena duces tecum for the production of various kinds of defined personal records pertaining to a consumer, maintained by a witness, as defined. Existing law also provides for the procedure to subpoena employment records. These provisions also require that the date specified on a subpoena duces tecum for the production of personal records or employment records be not less than 15 days from the date the subpoena is issued.

This bill would revise and expand the definition of “personal records” and “employment records” to include electronic data and expand the definition of “witness” to include various health care professionals and postsecondary schools, as specified.

The bill would delete the requirement that the date specified on the subpoena duces tecum for the production of personal records or employment records be not less than 15 days from the date the subpoena is issued. The bill would also provide that when a subpoena duces tecum commands the production of business records for copying, specific information identifiable only to the deponent’s records system shall not be a valid designation of records. The bill would make other changes with respect to the production and copying of business and employment records.

(3) Existing law requires any party who subpoenas medical records in a workers’ compensation proceeding to send a copy of the subpoena to all parties of record in the proceeding, as specified.

This bill would make that provision applicable to any records.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.



The people of the State of California do enact as follows:

SECTION 1. Section 56.10 of the Civil Code is amended to read:

56.10. (a) No provider of health care shall disclose medical information regarding a patient of the provider without first obtaining an authorization, except as provided in subdivision (b) or (c).

(b) A provider of health care shall disclose medical information if the disclosure is compelled by any of the following:

(1) By a court pursuant to an order of that court.

(2) By a board, commission, or administrative agency for purposes of adjudication pursuant to its lawful authority.

(3) By a party to a proceeding before a court or administrative agency pursuant to a subpoena; *issued under Section 2020 of the Code of Civil Procedure, a subpoena duces tecum issued under regulations promulgated by the Division of Workers' Compensation of the Department of Industrial Relations*, notice to appear served pursuant to Section 1987 of the Code of Civil Procedure, or any provision authorizing discovery in a proceeding before a court or administrative agency.

(4) By a board, commission, or administrative agency pursuant to an investigative subpoena issued under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(5) By an arbitrator or arbitration panel, when arbitration is lawfully requested by either party, pursuant to a subpoena duces tecum issued under Section 1282.6 of the Code of Civil Procedure, or any other provision authorizing discovery in a proceeding before an arbitrator or arbitration panel.

(6) By a search warrant lawfully issued to a governmental law enforcement agency.

(7) When otherwise specifically required by law.

(c) A provider of health care may disclose medical information as follows:

1 (1) The information may be disclosed to providers of
2 health care or other health care professionals or facilities
3 for purposes of diagnosis or treatment of the patient. This
4 includes, in an emergency situation, the communication
5 of patient information by radio transmission between
6 emergency medical personnel at the scene of an
7 emergency, or in an emergency medical transport
8 vehicle, and emergency medical personnel at a health
9 facility licensed pursuant to Chapter 2 (commencing
10 with Section ~~4200~~ 1250) of Division 2 of the Health and
11 Safety Code.

12 (2) The information may be disclosed to an insurer,
13 employer, health care service plan, hospital service plan,
14 employee benefit plan, governmental authority, or any
15 other person or entity responsible for paying for health
16 care services rendered to the patient, to the extent
17 necessary to allow responsibility for payment to be
18 determined and payment to be made. If (A) the patient
19 is, by reason of a comatose or other disabling medical
20 condition, unable to consent to the disclosure of medical
21 information and (B) no other arrangements have been
22 made to pay for the health care services being rendered
23 to the patient, the information may be disclosed to a
24 governmental authority to the extent necessary to
25 determine the patient's eligibility for, and to obtain,
26 payment under a governmental program for health care
27 services provided to the patient. The information may
28 also be disclosed to another provider as necessary to assist
29 the other provider in obtaining payment for health care
30 services rendered by that provider to the patient.

31 (3) The information may be disclosed to any person or
32 entity that provides billing, claims management, medical
33 data processing, or other administrative services for
34 providers or for any of the persons or entities specified in
35 paragraph (2). However, no information so disclosed
36 shall be further disclosed by the recipient in any way
37 which would be violative of this part.

38 (4) The information may be disclosed to organized
39 committees and agents of professional societies or of
40 medical staffs of licensed hospitals, or to licensed health

1 care service plans, or to professional standards review
2 organizations, or to utilization and quality control peer
3 review organizations as established by Congress in Public
4 Law 97-248 in 1982, or to persons or organizations
5 insuring, responsible for, or defending professional
6 liability which a provider may incur, if the committees,
7 agents, plans, organizations, or persons are engaged in
8 reviewing the competence or qualifications of health care
9 professionals or in reviewing health care services with
10 respect to medical necessity, level of care, quality of care,
11 or justification of charges.

12 (5) The information in the possession of any provider
13 of health care may be reviewed by any private or public
14 body responsible for licensing or accrediting the provider
15 of health care. However, no patient identifying medical
16 information may be removed from the premises except
17 as expressly permitted or required elsewhere by law.

18 (6) The information may be disclosed to the county
19 coroner in the course of an investigation by the coroner's
20 office.

21 (7) The information may be disclosed to public
22 agencies, clinical investigators, health care research
23 organizations, and accredited public or private nonprofit
24 educational or health care institutions for bona fide
25 research purposes. However, no information so disclosed
26 shall be further disclosed by the recipient in any way
27 which would permit identification of the patient.

28 (8) A provider of health care that has created medical
29 information as a result of employment-related health care
30 services to an employee conducted at the specific prior
31 written request and expense of the employer may
32 disclose to the employee's employer that part of the
33 information which:

34 (A) Is relevant in a law suit, arbitration, grievance, or
35 other claim or challenge to which the employer and the
36 employee are parties and in which the patient has placed
37 in issue his or her medical history, mental or physical
38 condition, or treatment, provided it may only be used or
39 disclosed in connection with that proceeding.

(B) Describes functional limitations of the patient that may entitle the patient to leave from work for medical reasons or limit the patient's fitness to perform his or her present employment, provided that no statement of medical cause is included in the information disclosed.

(9) Unless the provider is notified in writing of an agreement by the sponsor, insurer, or administrator to the contrary, the information may be disclosed to a sponsor, insurer, or administrator of a group or individual insured or uninsured plan or policy which the patient seeks coverage by or benefits from, if the information was created by the provider of health care as the result of services conducted at the specific prior written request and expense of the sponsor, insurer, or administrator for the purpose of evaluating the application for coverage or benefits.

(10) The information may be disclosed to a group practice prepayment health care service plan by providers which contract with the plan and may be transferred among providers which contract with the plan, for the purpose of administering the plan. Medical information may not otherwise be disclosed by a health care service plan except in accordance with the provisions of this part.

(11) Nothing in this part shall prevent the disclosure by a provider of health care to an insurance institution, agent, or support organization, subject to Article 6.6 (commencing with Section 791) of *Chapter 1 of Part 2 of Division 1 of the Insurance Code*, of medical information if the insurance institution, agent, or support organization has complied with all requirements for obtaining the information pursuant to Article 6.6 (commencing with Section 791) of *Chapter 1 of Part 2 of Division 1 of the Insurance Code*.

(12) The information relevant to the patient's condition and care and treatment provided may be disclosed to a probate court investigator engaged in determining the need for an initial conservatorship or continuation of an existent conservatorship, if the patient is unable to give informed consent, or to a probate court

1 investigator, probation officer, or domestic relations
2 investigator engaged in determining the need for an
3 initial guardianship or continuation of an existent
4 guardianship.

5 (13) To a tissue bank processing the tissue of a
6 decedent for transplantation into the body of another
7 person, but only with respect to the donating decedent,
8 for the purpose of aiding the transplant. For the purpose
9 of this paragraph, the terms “tissue bank” and “tissue”
10 have the same meaning as defined in Section 1635 of the
11 Health and Safety Code.

12 (14) When the disclosure is otherwise specifically
13 authorized by law.

14 (15) Basic information including the patient’s name,
15 city of residence, age, sex, and general condition may be
16 released to a state or federally recognized disaster relief
17 organization for the purpose of responding to disaster
18 welfare inquiries.

19 *(d) Any physician who willfully withholds patient*
20 *records or summaries of patient records because of an*
21 *unpaid bill for health care services may be subject to the*
22 *sanctions described in Section 123110 of the Health and*
23 *Safety Code.*

24 SEC. 2. Section 1985.3 of the Code of Civil Procedure
25 is amended to read:

26 1985.3. (a) For purposes of this section, the following
27 definitions apply:

28 (1) “Personal records” means the original ~~or~~ any copy
29 of books, documents, ~~or~~ other writings, *or electronic data*
30 pertaining to a consumer and which are maintained by
31 any “witness” which is a physician, *dentist,*
32 *ophthalmologist, optometrist, chiropractor, physical*
33 *therapist, acupuncturist, podiatrist, veterinarian,*
34 *veterinary hospital, veterinary clinic, pharmacist,*
35 *pharmacy, hospital, medical center, clinic, radiology or*
36 *MRI center, clinical or diagnostic laboratory, state or*
37 *national bank, state or federal association (as defined in*
38 *Section 5102 of the Financial Code), state or federal*
39 *credit union, trust company, anyone authorized by this*
40 *state to make or arrange loans that are secured by real*

1 property, security brokerage firm, insurance company,
2 title insurance company, underwritten title company,
3 escrow agent licensed pursuant to Division 6
4 (commencing with Section 17000) of the Financial Code
5 or exempt from licensure pursuant to Section 17006 of the
6 Financial Code, attorney, accountant, institution of the
7 Farm Credit System, as specified in Section 2002 of Title
8 12 of the United States Code, or telephone corporation
9 which is a public utility, as defined in Section 216 of the
10 Public Utilities Code, or psychotherapist, as defined in
11 Section 1010 of the Evidence Code, or a private or public
12 preschool, elementary school, ~~or~~ secondary school, *or*
13 *postsecondary school as described in Section 76244 of the*
14 *Education Code.*

15 (2) “Consumer” means any individual, partnership of
16 five or fewer persons, association, or trust which has
17 transacted business with, or has used the services of, the
18 witness or for whom the witness has acted as agent or
19 fiduciary.

20 (3) “Subpoenaing party” means the person or persons
21 causing a subpoena duces tecum to be issued or served in
22 connection with any civil action or proceeding pursuant
23 to this code, but shall not include the state or local
24 agencies described in Section 7465 of the Government
25 Code, or any entity provided for under Article VI of the
26 California Constitution in any proceeding maintained
27 before an adjudicative body of that entity pursuant to
28 Chapter 4 (commencing with Section 6000) of Division
29 3 of the Business and Professions Code.

30 (4) “Deposition officer” means a person who meets
31 the qualifications specified in paragraph (3) of
32 subdivision (d) of Section 2020.

33 ~~(b) The date specified in a subpoena duces tecum for~~
34 ~~the production of personal records shall not be less than~~
35 ~~15 days from the date the subpoena is issued. Prior to the~~
36 ~~date called for in the subpoena duces tecum for the~~
37 ~~production of personal records, the subpoenaing party~~
38 ~~shall serve or cause to be served on the consumer whose~~
39 ~~records are being sought a copy of the subpoena duces~~
40 ~~tecum, of the affidavit supporting the issuance of the~~

1 subpoena, *if any*, and of the notice described in
2 subdivision (e), *and proof of service as indicated in*
3 *paragraph (1) of subdivision (c)*. This service shall be
4 made as follows:

5 (1) To the consumer personally, or at his or her last
6 known address, or in accordance with Chapter 5
7 (commencing with Section 1010) of Title 14 of Part 3, or,
8 if he or she is a party, to his or her attorney of record. If
9 the consumer is a minor, service shall be made on the
10 minor's parent, guardian, conservator, or similar
11 fiduciary, or if one of them cannot be located with
12 reasonable diligence, then service shall be made on any
13 person having the care or control of the minor or with
14 whom the minor resides or by whom the minor is
15 employed, and on the minor if the minor is at least 12
16 years of age.

17 (2) Not less than 10 days prior to the date for
18 production specified in the subpoena duces tecum, plus
19 the additional time provided by Section 1013 if service is
20 by mail.

21 (3) At least five days prior to service upon the
22 custodian of the records, plus the additional time
23 provided by Section 1013 if service is by mail.

24 (c) Prior to the production of the records, the
25 subpoenaing party shall do either of the following:

26 (1) Serve or cause to be served upon the witness a
27 proof of personal service or of service by mail attesting to
28 compliance with subdivision (b).

29 (2) Furnish the witness a written authorization to
30 release the records signed by the consumer or by his or
31 her attorney of record. The witness may presume that any
32 attorney purporting to sign the authorization on behalf of
33 the consumer acted with the consent of the consumer,
34 *and that any objection to release of records on the*
35 *deposition date is waived*.

36 (d) A subpoena duces tecum for the production of
37 personal records shall be served in sufficient time to allow
38 the witness a reasonable time, *as provided in paragraph*
39 *(1) of subdivision (d) of Section 2020*, to locate and
40 produce the records or copies thereof.

~~1 Except as to records subpoenaed for a criminal
2 proceeding or records subpoenaed during trial, a
3 subpoena duces tecum served upon a witness with
4 records in more than one location shall be served no less
5 than 10 days prior to the date specified for production,
6 unless good cause is shown pursuant to subdivision (h).~~

(e) Every copy of the subpoena duces tecum and affidavit, *if any*, served on a consumer or his or her attorney in accordance with subdivision (b) shall be accompanied by a notice, in a typeface designed to call attention to the notice, indicating that (1) records about the consumer are being sought from the witness named on the subpoena; (2) if the consumer objects to the witness furnishing the records to the party seeking the records, the consumer must file papers with the court or serve a written objection as provided in subdivision (g) prior to the date specified for production on the subpoena; and (3) if the party who is seeking the records will not agree in writing to cancel or limit the subpoena, an attorney should be consulted about the consumer's interest in protecting his or her rights of privacy. If a notice of taking of deposition is also served, that other notice may be set forth in a single document with the notice required by this subdivision.

(f) A subpoena duces tecum for personal records maintained by a telephone corporation which is a public utility, as defined in Section 216 of the Public Utilities Code, shall not be valid or effective unless it includes a consent to release, signed by the consumer whose records are requested, as required by Section 2891 of the Public Utilities Code.

(g) Any consumer whose personal records are sought by a subpoena duces tecum and who is a party to the civil action in which this subpoena duces tecum is served may, prior to the date for production, bring a motion under Section 1987.1 to quash or modify the subpoena duces tecum. Notice of the bringing of that motion shall be given to the witness and deposition officer at least five days prior to production. The failure to provide notice to the deposition officer shall not invalidate the motion to

1 quash or modify the subpoena duces tecum *nor subject*
2 *the deposition officer to any liability for the release of*
3 *records without proper notice.*

4 Any other consumer *or nonparty* whose personal
5 records are sought by a subpoena duces tecum may, prior
6 to the date of production, serve on the ~~requesting~~
7 *subpoenaing party and the witness, and the deposition*
8 *officer*; a written objection that ~~specifies~~ *cites* the specific
9 grounds on which production of the personal records
10 should be prohibited.

11 No witness or deposition officer shall be required to
12 produce personal records after receipt of notice that such
13 a motion has been brought *by consumer, or after receipt*
14 *of a written objection from a nonparty consumer*, except
15 upon order of the court in which the action is pending or
16 by agreement of the parties, witnesses, and consumers
17 affected. ~~No witness shall be required to produce~~
18 ~~personal records after service of a written objection by a~~
19 ~~nonparty consumer, except upon order of the court in~~
20 ~~which the action is pending or by agreement of the~~
21 ~~parties, witnesses, and consumers affected.~~

22 The party requesting a consumer's personal records
23 may bring a motion under Section 1987.1 to enforce the
24 subpoena within 20 days of service of the written
25 objection. The motion shall be accompanied by a
26 declaration showing a reasonable and good faith attempt
27 at informal resolution of the dispute between the party
28 requesting the personal records and the consumer or the
29 consumer's attorney.

30 (h) Upon good cause shown and provided that the
31 rights of witnesses and consumers are preserved, a
32 subpoenaing party shall be entitled to obtain an order
33 shortening the time for service of a subpoena duces
34 tecum or waiving the requirements of subdivision (b)
35 where due diligence by the subpoenaing party has been
36 shown.

37 (i) Nothing contained in this section shall be construed
38 to apply to any subpoena duces tecum which does not
39 request the records of any particular consumer or
40 consumers and which requires a custodian of records to

1 delete all information which would in any way identify
2 any consumer whose records are to be produced.

3 (j) This section shall not apply to proceedings
4 conducted under Division 1 (commencing with Section
5 50), Division 4 (commencing with Section 3200), Division
6 4.5 (commencing with Section 6100), or Division 4.7
7 (commencing with Section 6200) of the Labor Code.

8 (k) Failure to comply with this section shall be
9 sufficient basis for the witness to refuse to produce the
10 personal records sought by a subpoena duces tecum.

11 SEC. 3. Section 1985.6 of the Code of Civil Procedure
12 is amended to read:

13 1985.6. (a) For purposes of this section, the following
14 definitions apply:

15 (1) "Employment records" means the original or any
16 copy of books, documents, ~~or~~ other writings, *or electronic*
17 *data* pertaining to the employment of any employee
18 maintained by the current or former employer of the
19 employee.

20 (2) "Employee" means any individual who is or has
21 been employed by a witness subject to a subpoena duces
22 tecum.

23 (3) "Subpoenaing party" means the person or persons
24 causing a subpoena duces tecum to be issued or served in
25 connection with any civil action or proceeding, but shall
26 not include the state or local agencies described in
27 Section 7465 of the Government Code, or any entity
28 provided for under Article VI of the California
29 Constitution in any proceeding maintained before an
30 adjudicative body of that entity pursuant to Chapter 4
31 (commencing with Section 6000) of Division 3 of the
32 Business and Professions Code.

33 (4) "Deposition officer" means a person who meets
34 the qualifications specified in paragraph (3) of
35 subdivision (d) of Section 2020.

36 ~~(b) The date specified in a subpoena duces tecum for~~
37 ~~the production of employment records shall not be less~~
38 ~~than 15 days from the date the subpoena is issued. Prior~~
39 ~~to the date called for in the subpoena duces tecum of the~~
40 ~~production of employment records, the subpoenaing~~

1 party shall serve or cause to be served on the employee
2 whose records are being sought a copy of: the subpoena
3 duces tecum; the affidavit supporting the issuance of the
4 subpoena, if any; and the notice described in subdivision
5 (e), *and proof of service as provided in paragraph (1) of*
6 *subdivision (c)*. This service shall be made as follows:

7 (1) To the employee personally, or at his or her last
8 known address, or in accordance with Chapter 5
9 (commencing with Section 1010) of Title 14 of Part 3, or,
10 if he or she is a party, to his or her attorney of record. If
11 the employee is a minor, service shall be made on the
12 minor's parent, guardian, conservator, or similar
13 fiduciary, or if one of them cannot be located with
14 reasonable diligence, then service shall be made on any
15 person having the care or control of the minor, or with
16 whom the minor resides, and on the minor if the minor
17 is at least 12 years of age.

18 (2) Not less than 10 days prior to the date for
19 production specified in the subpoena duces tecum, plus
20 the additional time provided by Section 1013 if service is
21 by mail.

22 (3) At least five days prior to service upon the
23 custodian of the employment records, plus the additional
24 time provided by Section 1013 if service is by mail.

25 (c) Prior to the production of the records, the
26 subpoenaing party shall either:

27 (1) Serve or cause to be served upon the witness a
28 proof of personal service or of service by mail attesting to
29 compliance with subdivision (b).

30 (2) Furnish the witness a written authorization to
31 release the records signed by the employee or by his or
32 her attorney of record. The witness may presume that the
33 attorney purporting to sign the authorization on behalf of
34 the employee acted with the consent of the employee,
35 *and that any objection to release of records on the*
36 *deposition date is waived*.

37 (d) A subpoena duces tecum for the production of
38 employment records shall be served in sufficient time to
39 allow the witness a reasonable time, *as provided in*
40 *paragraph (1) of subdivision (d) of Section 2020*, to locate

1 and produce the records or copies thereof. *The time of*
2 *service of the subpoena may not be shortened unless good*
3 *cause is shown pursuant to subdivision (h), or stipulated*
4 *to by the consumer pursuant to paragraph (4) of*
5 *subdivision (d) of Section 2020.*

6 ~~Except as to records subpoenaed for a criminal~~
7 ~~proceeding or records subpoenaed during trial, a~~
8 ~~subpoena duces tecum served upon a witness with~~
9 ~~records in more than one location shall be served no less~~
10 ~~than 10 days prior to the date specified for production,~~
11 ~~unless good cause is shown pursuant to subdivision (g).~~

12 (e) Every copy of the subpoena duces tecum and
13 affidavit served on an employee or his or her attorney in
14 accordance with subdivision (b) shall be accompanied by
15 a notice, in a typeface designed to call attention to the
16 notice, indicating that (1) employment records about the
17 employee are being sought from the witness named on
18 the subpoena; (2) the employment records may be
19 protected by a right of privacy; (3) if the employee
20 objects to the witness furnishing the records to the party
21 seeking the records the employee shall file papers with
22 the court prior to the date specified for production on the
23 subpoena; and (4) if the subpoenaing party does not
24 agree in writing to cancel or limit the subpoena, an
25 attorney should be consulted about the employee's
26 interest in protecting his or her rights of privacy. If a
27 notice of taking of deposition is also served, that other
28 notice may be set forth in a single document with the
29 notice required by this subdivision.

30 (f) Any employee whose employment records are
31 sought by a subpoena duces tecum may, prior to the date
32 for production, bring a motion under Section 1987.1 to
33 quash or modify the subpoena duces tecum. Notice of the
34 bringing of that motion shall be given to the witness and
35 the deposition officer at least five days prior to
36 production. The failure to provide notice to the
37 deposition officer shall not invalidate the motion to quash
38 or modify the subpoena duces tecum *nor shall the*
39 *deposition officer be liable for the release of those records*
40 *without proper notice.*

Any nonparty employee whose employment records are sought by a subpoena duces tecum may, prior to the date of production, serve on the ~~requesting party and subpoenaing party, and the deposition officer,~~ the witness a written objection that ~~specifies~~ *cites* the specific grounds on which production of the employment records should be prohibited.

No witness or deposition officer shall be required to produce employment records after receipt of notice that such a motion has been brought *by an employee, or after receipt of a written objection from a nonparty employee,* except upon order of the court in which the action is pending or by agreement of the parties, witnesses, and employees affected. ~~No witness shall be required to produce employment records after service of a written objection by a nonparty employee, except upon order of the court in which the action is pending or by agreement of the parties, witnesses, and employees affected.~~

The party requesting an employee's employment records may bring a motion under subdivision (c) of Section 1987 to enforce the subpoena within 20 days of service of the written objection. The motion shall be accompanied by a declaration showing a reasonable and good faith attempt at informal resolution of the dispute between the party requesting the employment records and the employee or the employee's attorney.

(g) Upon good cause shown and provided that the rights of witness and employees are preserved, a subpoenaing party shall be entitled to obtain an order shortening the time for service of a subpoena duces tecum or waiving the requirements of subdivision (b) where due diligence by the subpoenaing party has been shown.

(h) Nothing contained in this section shall be construed to apply to any subpoena duces tecum which does not request the records of any particular employee or employees and which requires a custodian of records to delete all information which would in any way identify any employee whose records are to be produced.

(i) This section shall not apply to proceedings conducted under Division 1 (commencing with Section 50), Division 4 (commencing with Section 3200), Division 4.5 (commencing with Section 6100), or Division 4.7 (commencing with Section 6200) of the Labor Code.

(j) Failure to comply with this section shall be sufficient basis for the witness to refuse to produce the employment records sought by subpoena duces tecum.

SEC. 4. Section 2020 of the Code of Civil Procedure is amended to read:

2020. (a) The method for obtaining discovery within the state from one who is not a party to the action is an oral deposition under Section 2025, a written deposition under Section 2028, or a deposition for production of business records and things under subdivisions (d) and (e). Except as provided in paragraph (1) of subdivision (h) of Section 2025, the process by which a nonparty is required to provide discovery is a deposition subpoena. The deposition subpoena may command any of the following:

(1) Only the attendance and the testimony of the deponent, under subdivision (c).

(2) Only the production of business records for copying, under subdivision (d).

(3) Both the attendance and the testimony of the deponent, as well as the production of business records, other documents, and tangible things, under subdivision (e).

Except as modified in this section, the provisions of Chapter 2 (commencing with Section 1985), and of Article 4 (commencing with Section 1560) of Chapter 2 of Division 11 of the Evidence Code, apply to a deposition subpoena.

(b) The clerk of the court in which the action is pending shall issue a deposition subpoena signed and sealed, but otherwise in blank, to a party requesting it, who shall fill it in before service. In lieu of the court-issued deposition subpoena, an attorney of record for any party may sign and issue a deposition subpoena; the deposition subpoena in that case need not be sealed, *a copy may be*

1 *served on the nonparty, and the attorney may retain the*
2 *original.*

3 (c) A deposition subpoena that commands only the
4 attendance and the testimony of the deponent shall
5 specify the time when and the place where the deponent
6 is commanded to attend for the deposition. It shall set
7 forth a summary of (1) the nature of a deposition, (2) the
8 rights and duties of the deponent, and (3) the penalties
9 for disobedience of a deposition subpoena described in
10 subdivision (h). If the deposition will be recorded by
11 videotape under paragraph (2) of subdivision (l) of
12 Section 2025, the deposition subpoena shall state that it
13 will be recorded in that manner. If the deponent is an
14 organization, the deposition subpoena shall describe with
15 reasonable particularity the matters on which
16 examination is requested, and shall advise that
17 organization of its duty to make the designation of
18 employees or agents who will attend described in
19 subdivision (d) of Section 2025.

20 (d) (1) A deposition subpoena that commands only
21 the production of business records for copying shall
22 designate the business records to be produced either by
23 specifically describing each individual item or by
24 reasonably particularizing each category of item,
25 *however specific information identifiable only to the*
26 *deponent's records system shall not be a valid designation*
27 *of records.* This deposition subpoena need not be
28 accompanied by an affidavit or declaration showing good
29 cause for the production of the business records
30 designated in it. It shall be directed to the custodian of
31 those records or another person qualified to certify the
32 records. It shall command compliance in accordance with
33 paragraph (4) on a date that is no earlier than 20 days
34 after the issuance, or 15 days after the service, of the
35 deposition subpoena, whichever date is later.

36 (2) If, under Section 1985.3 *or* 1985.6, the one to whom
37 the deposition subpoena is directed is a witness, and the
38 business records described in the deposition subpoena are
39 personal records pertaining to a consumer, the service of
40 the deposition subpoena shall be accompanied either by

1 a copy of the proof of service of the notice to the
2 consumer described in subdivision (e) of Section 1985.3,
3 or by the consumer's written authorization to release
4 personal records described in paragraph (2) of
5 subdivision (c) of Section 1985.3.

6 (3) The officer for a deposition seeking discovery only
7 of business records for copying under this subdivision
8 shall be a professional photocopier registered under
9 Chapter 20 (commencing with Section 22450) of Division
10 8 of the Business and Professions Code, or a person
11 exempted from the registration requirements of that
12 chapter under Section 22451 of the Business and
13 Professions Code. This deposition officer shall not be
14 financially interested in the action, or a relative or
15 employee of any attorney of the parties. Any objection to
16 the qualifications of the deposition officer is waived unless
17 made before the date of production or as soon thereafter
18 as the ground for that objection becomes known or could
19 be discovered by reasonable diligence.

20 (4) Unless directed to make the records available for
21 inspection or copying by the subpoenaing party's
22 attorney or a representative of that attorney at the
23 witness' business address under subdivision (e) of Section
24 1560 of the Evidence Code, the custodian of the records
25 or other qualified person shall, in person, by messenger,
26 or by mail, deliver only to the deposition officer specified
27 in the deposition subpoena (1) a true, legible, and durable
28 copy of the records, and (2) an affidavit in compliance
29 with Section 1561 of the Evidence Code. If this delivery
30 is made to the office of the deposition officer, the records
31 shall be enclosed, sealed, and directed as described in
32 subdivision (c) of Section 1560 of the Evidence Code. If
33 this delivery is made at the office of the business whose
34 records are the subject of the deposition subpoena, the
35 custodian of those records or other qualified person shall
36 (1) permit the deposition officer specified in the
37 deposition subpoena to make a copy of the originals of the
38 designated business records *during normal business hours*
39 *as defined in subdivision (e) of Section 1560 of the*
40 *Evidence Code*, or (2) deliver to that deposition officer

1 a true, legible, and durable copy of the records on receipt
 2 of payment in cash or by check, by or on behalf of the
 3 party serving the deposition subpoena, of the reasonable
 4 costs of preparing that copy, *and an itemized statement*
 5 *for the cost of preparation*, as determined under
 6 subdivision (b) of Section 1563 of the Evidence Code.
 7 This copy need not be delivered in a sealed envelope.
 8 Unless the parties, and if the records are those of a
 9 consumer as defined in Section 1985.3 *or* 1985.6, the
 10 consumer, stipulate to an earlier date, the custodian of the
 11 records shall not deliver to the deposition officer the
 12 records that are the subject of the deposition subpoena
 13 prior to the date and time specified in the deposition
 14 subpoena. The following legend shall appear in boldface
 15 type on the deposition subpoena immediately following
 16 the date and time specified for production: “Do not
 17 release the requested records to the deposition officer
 18 prior to the date and time stated above.”

19 (5) Promptly on or after the deposition date and after
 20 the receipt or the making of a copy of business records
 21 under this subdivision, the deposition officer shall provide
 22 that copy to the party at whose instance the deposition
 23 subpoena was served, and a copy of those records to any
 24 other party to the action who then or subsequently,
 25 *within a period of six months following the settlement of*
 26 *the case*, notifies the deposition officer that the party
 27 desires to purchase a copy of those records.

28 (6) The provisions of Section 1562 of the Evidence
 29 Code concerning the admissibility of the affidavit of the
 30 custodian or other qualified person apply to a deposition
 31 subpoena served under this subdivision.

32 (e) A deposition subpoena that commands both the
 33 attendance and the testimony of the deponent, as well as
 34 the production of business records, documents, and
 35 tangible things, shall (1) comply with the requirements
 36 of subdivision (c), (2) designate the business records,
 37 documents, and tangible things to be produced either by
 38 specifically describing each individual item or by
 39 reasonably particularizing each category of item, and (3)
 40 specify any testing or sampling that is being sought. This

1 deposition subpoena need not be accompanied by an
2 affidavit or declaration showing good cause for the
3 production of the documents and things designated.

4 Where, as described in Section 1985.3, the person to
5 whom the deposition subpoena is directed is a witness,
6 and the business records described in the deposition
7 subpoena are personal records pertaining to a consumer,
8 the service of the deposition subpoena shall be
9 accompanied either by a copy of the proof of service of
10 the notice to the consumer described in subdivision (e)
11 of Section 1985.3, or by the consumer's written
12 authorization to release personal records described in
13 paragraph (2) of subdivision (c) of Section 1985.3.

14 (f) Subject to paragraph (1) of subdivision (d), service
15 of a deposition subpoena shall be effected a sufficient
16 time in advance of the deposition to provide the
17 deponent a reasonable opportunity to locate and produce
18 any designated business records, documents, and tangible
19 things, *as described in subdivision (d)*, and, where
20 personal attendance is commanded, a reasonable time to
21 travel to the place of deposition *as described in*
22 *subdivision (f) of Section 2020*. Any person may serve the
23 subpoena by personal delivery of a copy of it (1) if the
24 deponent is a natural person, to that person, and (2) if the
25 deponent is an organization, to any officer, director,
26 custodian of records, or to any agent or employee
27 authorized by the organization to accept service of a
28 subpoena.

29 If a deposition subpoena requires the personal
30 attendance of the deponent, under subdivision (c) or (e),
31 the party noticing the deposition shall pay to the
32 deponent in cash or by check the same witness fee and
33 mileage required by Chapter 1 (commencing with
34 Section 68070) of Title 8 of the Government Code for
35 attendance and testimony before the court in which the
36 action is pending. This payment, whether or not
37 demanded by the deponent, shall be made, at the option
38 of the party noticing the deposition, either at the time of
39 service of the deposition subpoena, or at the time the
40 deponent attends for the taking of testimony.

1 Service of a deposition subpoena that does not require
2 the personal attendance of a custodian of records or other
3 qualified person, under subdivision (d), *but does*
4 *command that records be delivered for inspection or*
5 *photocopying at the witness' place of business*, shall be
6 accompanied, whether or not demanded by the
7 deponent, by a payment in cash or by check of the witness
8 fee required by paragraph (6) of subdivision (b) of
9 Section 1563 of the Evidence Code.

10 (g) Personal service of any deposition subpoena is
11 effective to require of any deponent who is a resident of
12 California at the time of service (1) personal attendance
13 and testimony, if the subpoena so specifies, (2) any
14 specified production, inspection, testing, and sampling,
15 and (3) the deponent's attendance at a court session to
16 consider any issue arising out of the deponent's refusal to
17 be sworn, or to answer any question, or to produce
18 specified items, or to permit inspection *or photocopying,*
19 *if the subpoena so specifies*, or specified testing and
20 sampling of the items produced.

21 (h) A deponent who disobeys a deposition subpoena in
22 any manner described in subdivision (g) may be
23 punished for contempt under Section 2023 without the
24 necessity of a prior order of court directing compliance
25 by the witness, and is subject to the forfeiture and the
26 payment of damages set forth in Section 1992.

27 SEC. 5. Section 1560 of the Evidence Code is
28 amended to read:

29 1560. (a) As used in this article:

30 (1) "Business" includes every kind of business
31 described in Section 1270.

32 (2) "Record" includes every kind of record
33 maintained by such a business.

34 (b) Except as provided in Section 1564, when a
35 subpoena duces tecum is served upon the custodian of
36 records or other qualified witness of a business in an
37 action in which the business is neither a party nor the
38 place where any cause of action is alleged to have arisen,
39 and the subpoena requires the production of all or any
40 part of the records of the business, it is sufficient

1 compliance therewith if the custodian or other qualified
2 witness, within five days after the receipt of the subpoena
3 in any criminal action or within the time agreed upon by
4 the party who served the subpoena and the custodian or
5 other qualified witness, or within 15 days after the receipt
6 of the subpoena in any civil action or within the time
7 agreed upon by the party who served the subpoena and
8 the custodian or other qualified witness, delivers by mail
9 or otherwise a true, legible, and durable copy of all the
10 records described in the subpoena to the clerk of the
11 court or to the judge if there be no clerk or to such other
12 person as described in subdivision (c) of Section 2026 of
13 the Code of Civil Procedure, together with the affidavit
14 described in Section 1561.

15 (c) The copy of the records shall be separately
16 enclosed in an inner envelope or wrapper, sealed, with
17 the title and number of the action, name of witness, and
18 date of subpoena clearly inscribed thereon; the sealed
19 envelope or wrapper shall then be enclosed in an outer
20 envelope or wrapper, sealed, and directed as follows:

21 (1) If the subpoena directs attendance in court, to the
22 clerk of such court, or to the judge thereof if there be no
23 clerk.

24 (2) If the subpoena directs attendance at a deposition,
25 to the officer before whom the deposition is to be taken,
26 at the place designated in the subpoena for the taking of
27 the deposition or at the officer's place of business.

28 (3) In other cases, to the officer, body, or tribunal
29 conducting the hearing, at a like address.

30 (d) Unless the parties to the proceeding otherwise
31 agree, or unless the sealed envelope or wrapper is
32 returned to a witness who is to appear personally, the
33 copy of the records shall remain sealed and shall be
34 opened only at the time of trial, deposition, or other
35 hearing, upon the direction of the judge, officer, body, or
36 tribunal conducting the proceeding, in the presence of all
37 parties who have appeared in person or by counsel at the
38 trial, deposition, or hearing. Records which are original
39 documents and which are not introduced in evidence or
40 required as part of the record shall be returned to the



1 person or entity from whom received. Records which are
2 copies may be destroyed.

3 (e) As an alternative to the procedures described in
4 subdivisions (b), (c), and (d), the subpoenaing party may
5 direct the witness to make the records available for
6 inspection or copying by the party's attorney—~~or~~ the
7 attorney's representative, *or deposition officer as defined*
8 *in paragraph (3) of subdivision (d) of Section 2020 of the*
9 *Code of Civil Procedure*, at the witness' business address
10 under reasonable conditions during normal business
11 hours. Normal business hours, as used in this subdivision,
12 means those hours that the business of the witness is
13 normally open for business to the public, *which provides*
14 *a reasonable period of time for travel, set-up, and*
15 *execution of the records copying, and excludes limited*
16 *access or restrictions within normal business hours, such*
17 *as specific appointments. It shall be the responsibility of*
18 *the attorney's representative to deliver any copy of the*
19 *records as directed in the subpoena. Disobedience to the*
20 *deposition subpoena issued pursuant to this subdivision is*
21 *punishable as provided in subdivision (h) of Section 2020.*

22 SEC. 6. Section 1561 of the Evidence Code is
23 amended to read:

24 1561. (a) The records shall be accompanied by the
25 affidavit of the custodian or other qualified witness,
26 stating in substance each of the following:

27 (1) The affiant is the duly authorized custodian of the
28 records or other qualified witness and has authority to
29 certify the records.

30 (2) The copy is a true copy of all the records described
31 in the subpoena duces tecum, or pursuant to subdivision
32 (e) of Section 1560 the records were delivered to the
33 attorney—~~or~~ the attorney's representative, *or deposition*
34 *officer* for copying at the custodian's or witness' place of
35 business, as the case may be.

36 (3) The records were prepared by the personnel of the
37 business in the ordinary course of business at or near the
38 time of the act, condition, or event.

39 (4) The identity of the records.

1 (5) A description of the mode of preparation of the
2 records.

3 (b) If the business has none of the records described,
4 or only part thereof, the custodian or other qualified
5 witness shall so state in the affidavit, and deliver the
6 affidavit and ~~such~~ *those* records as *that* are available in ~~the~~
7 ~~manner~~ *one of the manners* provided in Section 1560.

8 ~~(c) Where the records described in the subpoena were~~
9 ~~delivered to the attorney or his or her representative for~~
10 ~~copying at the custodian's or witness' place of business, in~~
11 ~~addition to the affidavit required by subdivision (a), the~~
12 ~~records shall be accompanied by an affidavit by the~~
13 ~~attorney or his or her representative stating that the copy~~
14 ~~is a true copy of all the records delivered to the attorney~~
15 ~~or his or her representative for copying.~~

16 SEC. 7. Section 1563 of the Evidence Code is
17 amended to read:

18 1563. (a) This article shall not be interpreted to
19 require tender or payment of more than one witness fee
20 and one mileage fee or other charge, *to a witness or*
21 *witness' business*, unless there is an agreement to the
22 contrary *between the witness and the requesting party*.

23 (b) All reasonable costs incurred in a civil proceeding
24 by any witness which is not a party with respect to the
25 production of all or any part of business records the
26 production of which is requested pursuant to a subpoena
27 duces tecum may be charged against the party serving
28 the subpoena duces tecum.

29 (1) "Reasonable cost," as used in this section, shall
30 include, but not be limited to, the following specific costs:
31 ten cents (\$0.10) per page for standard reproduction of
32 documents of a size 8¹/₂ by 14 inches or less; twenty cents
33 (\$0.20) per page for copying of documents from
34 microfilm; actual costs for the reproduction of oversize
35 documents or the reproduction of documents requiring
36 special processing which are made in response to a
37 subpoena; reasonable clerical costs incurred in locating
38 and making the records available to be billed at the
39 maximum rate of sixteen dollars (\$16) per hour per
40 person, computed on the basis of four dollars (\$4) per

1 quarter hour or fraction thereof; actual postage charges;
2 and *the* actual ~~costs~~ cost, if any, charged to the witness by
3 a third person for the retrieval and return of records held
4 *offsite* by that third person.

5 (2) The requesting party, *or the requesting party's*
6 *deposition officer*, shall not be required to pay those costs
7 or any estimate thereof prior to the time the records are
8 available for delivery pursuant to the subpoena, but the
9 witness may demand payment of costs pursuant to this
10 section simultaneous with actual delivery of the
11 subpoenaed records, and until such time as payment is
12 made, is under no obligation to deliver the records.

13 (3) The witness shall submit an itemized statement for
14 the costs to the requesting party, *or the requesting party's*
15 *deposition officer if the deposition officer is to advance*
16 *the fees for costs*, setting forth the reproduction and
17 clerical costs incurred by the witness. ~~Upon~~ *Should the*
18 *costs exceed those authorized in paragraph (1), or the*
19 *witness refuses to produce an itemized statement of costs*
20 *as required by paragraph (3), upon* demand by the
21 requesting party, *or the requesting party's deposition*
22 *officer*, the witness shall furnish a statement setting forth
23 the actions taken by the witness in justification of the
24 costs.

25 (4) The requesting party may petition the court in
26 which the action is pending to recover from the witness
27 all or a part of the costs paid to the witness, or to reduce
28 all or a part of the costs charged by the witness, pursuant
29 to this subdivision, on the grounds that such costs were
30 excessive. Upon the filing of the petition the court shall
31 issue an order to show cause and from the time the order
32 is served on the witness the court has jurisdiction over the
33 witness. The court may hear testimony on the order to
34 show cause and if it finds that the costs demanded and
35 collected, or charged but not collected, exceed the
36 amount authorized by this subdivision, it shall order the
37 witness to remit to the requesting party, or reduce its
38 charge to the requesting party by an amount equal to, the
39 amount of the excess. In the event that the court finds the
40 costs excessive and charged in bad faith by the witness,

1 the court shall order the witness to remit the full amount
2 of the costs demanded and collected, or excuse the
3 requesting party from any payment of costs charged but
4 not collected, and the court shall also order the witness to
5 pay the requesting party the amount of the reasonable
6 expenses incurred in obtaining the order including
7 attorney's fees. If the court finds the costs were not
8 excessive, the court shall order the requesting party to
9 pay the witness the amount of the reasonable expenses
10 incurred in defending the petition, including attorney's
11 fees.

12 (5) If a subpoena is served to compel the production
13 of business records and is subsequently withdrawn, or is
14 quashed, modified or limited on a motion made other
15 than by the witness, the witness shall be entitled to
16 reimbursement pursuant to paragraph (1) for all costs
17 incurred in compliance with the subpoena to the time
18 that the requesting party has notified the witness that the
19 subpoena has been withdrawn or quashed, modified or
20 limited. In the event the subpoena is withdrawn or
21 quashed, if those costs are not paid within 30 days after
22 demand therefor, the witness may file a motion in the
23 court in which the action is pending for an order
24 requiring payment, and the court shall award the
25 payment of expenses and attorney's fees in the manner
26 set forth in paragraph (4).

27 (6) Where the records are delivered to the attorney—~~or~~
28 the attorney's representative, *or the deposition officer* for
29 inspection or photocopying at the witness' place of
30 business, the only fee for complying with the subpoena
31 shall not exceed fifteen dollars (\$15), plus *the* actual ~~costs~~
32 *cost*, if any, charged to the witness by a third person for
33 retrieval and return of records held offsite by ~~the~~ *that*
34 third person. If the records are retrieved from microfilm,
35 the reasonable cost, as defined in paragraph (1), shall also
36 apply.

37 (c) When the personal attendance of the custodian of
38 a record or other qualified witness is required pursuant
39 to Section 1564, in a civil proceeding, he or she shall be
40 entitled to the same witness fees and mileage permitted

1 in a case where the subpoena requires the witness to
2 attend and testify before a court in which the action or
3 proceeding is pending and to any additional costs
4 incurred as provided by subdivision (b).

5 SEC. 8. Section 4055.2 of the Labor Code is amended
6 to read:

7 4055.2. Any party who subpoenas ~~medical~~ records in
8 any proceeding under this division shall concurrent with
9 service of the subpoena upon the person who has
10 possession of the ~~medical~~ records, send a copy of the
11 subpoena to all parties of record in the proceeding.

12 SEC. 9. No reimbursement is required by this act
13 pursuant to Section 6 of Article XIII B of the California
14 Constitution because the only costs that may be incurred
15 by a local agency or school district will be incurred
16 because this act creates a new crime or infraction,
17 eliminates a crime or infraction, or changes the penalty
18 for a crime or infraction, within the meaning of Section
19 17556 of the Government Code, or changes the definition
20 of a crime within the meaning of Section 6 of Article
21 XIII B of the California Constitution.

